Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE

UNITED STATES

October Term, 1995

HASSAN ALEEM

petitioner

-vs-

INTERNATIONAL UNION OF AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES: GEARLD W.MCENTEE, President of International Union of AFCME; SAFERIAN, Chairperson of the Judicial panel; Ralph Mendez, President of local 121, an affiliate of AFSCME; RAYMOND WELBORNE, President of local 1227, an affiliate of AFSCME.

respondents

PETITION FOR A WRIT OF CERTIORAI TO THE UNITED STATE COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI.

Hassan Aleem
P.O.Box 43164
DETROIT, MICH 48243
(313) 8948314 or 9238222
(313) 224-3212 work

54 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether an International Union discipline of Local Union Member for right to sue and to participate in litigation is a violation of 29.U.S.C. 411 (A) 4 and 412

2. Whether and International Union Discipline of a Local Union Member for free speech and assembly and the right to participate fully in the affairs of the Union Violation Sec.29.U.S.C.411 Sec.101 (2)

3. Whether one Union Member can be discipline for the actions of other Union Member I.E. "Am I my brothers keeper?" A violation of the 14th Amendment due process and equal rotection of the law.

4. Whether the court erred in raising issues not briefed by defendants can be used to grant 12b Motion To Dismiss, in violation of Union Member 14th Amendment Rights to due process and equal protection of the law.

5. Whether the District Court and Appeals Court erred in not granting disciplined Union Member's Summary Judgement when International Union and Officers never responded to Union Member's Summary Judgement or foreclose on the issues.

6. Whether the District Court erred in not issuing an Injunction against International Union for disciplining Union Member by suspending him for two

years when the Hearing was void and Hearing Officer had no authority.

7. Whether the vote of the Local Union Membership is Res Judicata and binding on the International Union where the judgement in one case has successfully been made the basis for a Judgement in a second case denying the prohibition against (Fifth Amendment) double jeopardy by being subject to the same offense twice.

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The opinion of the Court of Appeals is stamped NOT RECOMMENDED FOR FULL-TEX PUBLICATION is reported at___ f.2d___ (6th Cir.1995). The opinion of the district is reported at ___F. Supp.__(6th Cir.1994)

JURISDICTION

The judgement of the Court of Appeals was entered on April 7, 1995. This Court has jurisdiction to review the judgement of the Court of Appeals by writ of certiorari pursuant to 28 U.S.C.§1254(1) (1982)

STATUTORY PROVISION INVOLVED

LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT of 1959.(29 U.S.C.411) Sec.101 (a)(1),(2),(3),(4),(5). (29 U.S.C. 412) and Rule 12b of the Federal Rules of Civil Procedure and Rule 56(c) of the Federal rules of Civil Procedure,

STATEMENT OF THE CASE

Local Union Member was discipline by Local Union President and Local Executive Board without notice of Charges or Hearing.

Local Union Member was reinstated as Union Steward by a vote of the Union Membership.

The International Union illegally suspended Local Union in violation of International Constitution and Title 29 U.S.C.411 and 412

REASONS FOR GRANTING THE WRIT

The 6th Circuit Court of Appeals Creative Legislation has eviscerated Title 29 U.S.c.411 by requiring three additional elements not authorized by Congress

1. The four month exhaustion of hearing procedure start at the time of hearing instead of at the time of an Infrigment of a right.

2. The Union has taken a consistent position against him in several litigation actions before going to court.

3. The District Court and Appeals Court used a (Hearsay) Summary of the hearing prepared by Mr. Mendez

instead of a Verbatim Transcript of the Hearing to grant Summary Judgement and Motion to Dismiss.

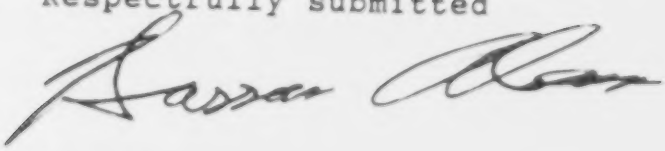
If allowed to stand this decision will deny millions of Union Members excess to the Courts. It appears that only a few elite Union Members will be able to pass these new test in order to gain access to the Courts.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

July 5, 1995

Respectfully submitted



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No. 94-1995

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

HASSAN ALEEM,

Plaintiff-Appellant,

V

INTERNATIONAL UNION OF AMERICAN FEDERATION OF STATE,COUNTY AND MUNICIPAL EMPLOYEES;GERALD W. MCENTEE,President of International Union of AFSCME; JOHN SEFERIAN, Chairperson of the Judicial Panel; RALPH MENDEZ, President of Local 121, an affiliate of AFSCME, RAYMOND WELBORNE, President of Local 1227, an affiliate of AFSCME,

Defendants-Appellees

FILED APR 07 1995

LEONARD GREEN, Clerk

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION.

SIXTH Circuit Rule 24 limits citation to specific situations.Please see Rule 24 before citing in a proceeding in a court in the SIXTH CIRCUIT.If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

BEFORE: KEITH, MARTIN, and GUY, Circuit Judges.

HASSAN ALEEM, proceeding pro se, appeals a district court judgement.

dismissing his action alleging violations of the Labor Management Reporting and Disclosure Act (LMRDA), 29U.S.C.§§401-531.The case has been referred to a panel of the court pursuant to rule 9(a),Rules of the Sixth Circuit. Upon examination this panel unanimously agrees that oral argument is not needed. Fed R. App. P.34(a).

Before Aleem filed suit, a Judicial panel of the American Federation of State, County and Municipal Employees (AFSCME) concluded that Aleem had violated the AFSCME Constitution and suspended his membership for two years. Aleem did not exercise his right under the AFSCME constitution to appeal to the full judicial panel or his right to file charges. Thereafter, seeking monetary and equitable relief, Aleem sued AFSCME, its president (McEntee),

The chairperson (Seferian) of the Judicial Panel, the president (Mendez) of Local 121, an affiliate of AFSCME, and the president(Welborne) of Local 1227, also an affiliate of AFSCME. Aleem alleged that the defendants violated his rights to due process and equal protection when;1) they conspired to suspend his AFSCME membership; and 2) defend Welborne violated his rights by charging him with a union violation after Aleem allegedly assisted in initiating a case on behalf of three members of Local 1227 who had been laid-off by the City of Detroit.

Upon review of the defendants' motions to dismiss (including defendant Welborne's motions to dismiss or in the alternative for summary judgment),

A magistrate judge recommended that the district court grant summary judgment in favor of defendant Welborne as Aleem's claims are without merit, and that it dismiss Aleem,s claims against the remaining defendants because he had not exhausted his internal union remedies. Over Aleem's Objections, the district court granted summary judgment in favor of defendant Welborne and dismissed the remaining defendants. On appeal, Aleem essentially reasserts his same claims.

Upon review, we conclude that the district court properly dismissed defendants AFSCME,McEntee, Seferian and Mendez. This court renders de novo review of a district court's judgment dismissing a complaint pursuant to Fed. R. Civ. 12(b)(6).See Sinay v. Lamson & Sessions Co.,948 F.2d 1037, 1039-40 (6th Cir. 1991).

Construing the complaint in the light most favorable to the plaintiff, and accepting all of his factual allegations as true, we conclude that the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief against these defendants. See Meador v. Cabinet for Human Resources, 902 F.2d 474, 475 (6th Cir.), cert. denied 498 U.S. 867 (1990). This is so because Aleem has not exhausted his internal union remedies prior to seeking redress in the federal courts. See Homes v. Donovan, 984 F.2d 732, 738 (6th Cir. 1993). Moreover, he has not established that the internal union remedies are inadequate or that the union has taken a consistent position against him in several litigated actions.

See Shimman v. Miller, 995 F.2d 651, 654 (6th Cir. 1993), cert. denied,. 114 S. Ct. 925 (1994); Verville v. International Ass'n of Machinist & Aerospace Workers, 520 F.2d 615, 620 (6th Cir. 1975).

As for his claim against Welborne, we initially note that Aleem has stated legally cognizable claim against Welborne because the LMRDA permits a union member to file a suit against individual defendants who violate the member's rights under 29 U.S.C. § 411. 29 U.S.C. § 412; Rosario v. Amalgamated Ladies' Garment Cutters' Union, Local 10, 605 F2d. 1228,1246-47 (2d Cir. 1979) cert. denied, 446 U.S. 919 (1980).

Nonetheless, we conclude that the district court properly granted summary judgment in favor of Welborne. See Fed.R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986). The LMRDA permits a union to institute reasonable exhaustion requirements. See 29 U.S.C. § 411 (a)(4). Thus, Defendant Welborne properly charged Aleem with instituting or urging others to institute a lawsuit against a union body or officer with out first exhausting all internal remedies and with interfering with a union offical's discharge of his lawful duties.

According, we hereby affirm the district court's judgment. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk

APPENDIX

EXHIBIT 1

AFFIDAVIT SUPPORTING
ANSWERING TO MOTION TO
DISMISS AND MOTION FOR
SUMMARY JUDGEMENT

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

/s/ Alderich J. Martin
/s/ Ray Anderson JR
/s/ Reyes Ricardo
/s/ Daniel L Shockley
/s/ Sheiliah V Johnson
/s/ Daniel Lopez

we being duly sworn, depose
and says:

(1) That we bare witness in this action and have personal knowledge of the matters set fourth in the affidavit.

(2) That on July 24, 1992 Mr. Welborne, the president of Local 1227 order Mr. Aleem, chief steward of local 1227, not to talk to Mr, Monks, Mr, Reyes, or Mr, Gonzales, who are all members of local 1227. Mr, Welborne also order Mr, Aleem not to attend the court hearing being held that day. Mr. Welborne told Mr. Aleem that if he attended the court hearing or talked to the three union members that were suing Local 1227,

he would be fired as chief steward. Mr. Welborne told Mr. Aleem that he was either for or against the union. If he went to court to observe the proceedings he would be against the union and would be fired as chief steward. Mr. Aleem did not attend the court proceedings or did not talk to Mr, Monks, Mr, Reyes, or Mr, Gonzales. upon returning from court, Mr, welborne fired Mr. Aleem as chief steward.

We know that from about January 1,1992 to the present time Mr Aleem has continously resided at 1699 Fullerton, in the City Of Detroit, County Of Wayne, State Of Michigan.

SUBSCRIBE AND SWORN TO BEFORE ME

ON THE DAY OF FEBUAURY 19th ,1993;

EASTER WELLS
NOTARY PUBLIC

/s/ Alderich J Martin
/s/ Ray Anderson JR
/s/ Reyes ,Ricardo
/s/ Daniel L Shockley
/s/ Sheiah L Johnson
/s/ Daniel Lopaz

EXHIBIT 2

AFFIDAVIT SUPPORTING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

STATE OF MICHIGAN)
)SS.
COUNTY OF WAYNE)

/s/Alderich J. Martin
/s/Robert Budwell
/s/Ray Anderson JR
/s/Sheilah V. Johnson
/s/Daniel Lopez
/s/Ronald R. Meur
/s/Micheal Clay
/s/Earl Grimes

We being first duly sworn, deposes and says:

(1) That we bare witness in this action and have personal knowledge of the matters set forth in this affidavit.

(2) We make this affidavit in support of Application for Temporary Restraining Order and Preliminary Injunction.

(3) That Rey Welborne, president of local 1227 dismissed Hassan Aleem as chief union, steward for allegedly filing a suit against the city of Detroit, AFSCME council 25 and local 1227.

On August 5, 1992, the membership rescinded the president action in the executive board report and reinstated him back as chief steward in accordance to local by law of local 1227.

We know that from about Jan. 1, 1992, to the present time, that Hassan Aleem has continuously resided at 1699 Fullerton, in city of Detroit, state of Michigan.

SUBSCRIBED AND SWORN TO BEFORE

ME, ON THE 19 DAY of February ,

1992

/s/ Easter M. Williams
NOTARY PUBLIC

/s/Alderich J. Martin
/s/Ray J. Anderson JR
/s/Micheal Clay
/s/Sheilah V. Johnson
/s/Daniel Lopez
/s/Ronald Muer
/s/Earl Grimes
/s/Robert Budwell

EXHIBIT 3

EXEC. BOARD MEETING
JULY 30, 1992
4:30 pm

President called the meeting to order a few minutes late to allow for late arrivals.

Present were: RAY WELBORNE, PRES.
BILL AARON, V. PRES.
GERALD PULK, TREAS.
JOE KNOX, E. BOARD
SYLVESTER AUSTIN, E. BOARD
EARL KNOTT, E. BOARD (LATE)

The purpose of this meeting was for the President to explain the dismissal of Hassan Aleem as chief steward in Buildings.

Aleem had caused to be filed, a lawsuit against the City of Detroit, AFSCME council #25, and Local 1227. The lawsuit was on the behalf of T. Monks, R. Gonzales, and R. Reyes.

Filing such a suit is a violation of the AFSCME International constitution. Monks & Reyes were not aware the suit included local 1227.

The case was thrown out of court.

The suit charged R. Welborn with conspiracy - it charged that the Union and/or Welborne had refused to do anything to help the three inspectors who were first laid off. Aleem would have known this to be untrue as he was present at the grievance meeting as Welborne tried to fight for these three.

Welborne feels the former stewards actions were underhanded and subversive, as Welborne was not aware of the intent to sue the local before he (Welborne) was supoenaed. Welborne felt that the former stewards actions has hurt council #25, Welborne, and Local 1227, therefore Welborne removed Aleem as steward.

Welborne went on to explain that he had approached our lawyer seeking court action against the city for laying off these three. The lawyer advised strongly against such action stating that we had no legal basis for such a suit and that if the case were heard, a ruling against us would set a dangerous precedent which could undermine any future actions we might attempt.

AFSCME later took subsequent layoffs to court but these cased were would appear to be accurate.

Before this lawsuit, Welborne had thousht that Allem would appear to be unable to work with

the President of Local 1227. He is dismissed.

The question was posed whether the President had the right to remove a steward. The bylaws allow the President to appoint a steward with confirmation by the executive board. It was generally agreed that the President has the right to remove a steward.

Welborne went on to indicate that the City is playing a lot tricks in negotiating the master contract and that he, and Council #25 and the bargaining team need to devote all their energies toward the negotiations. The lawsuit by Aleem has cost Council #25 approximately the amount of money one grievance arbitration would cost. Therefore we can expect one less grievance to be taken to arbitration.

The by-laws don't indicate that a vote is necessary by the E. Board to remove a steward but, a consensus seemed to support Welborne's decision.

FOOTNOTE: Hassan Aleem will have an opportunity to speak on his behalf because the President is intending to bring him up on charges before the Union.

Respectfully Submitted,

Gerald Pulk (Treasurer)

EXHIBIT 4

STATE OF MICHIGAN
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HASSAN ALEEM CASE NO.93CV70076DT
Hon.Patrick J Duggan

Plaintiff,

vs.

INTERNATIONAL UNION OF AFSCME

GERALD W. McENTEE, PRESIDENT
OF INTERNATIONAL UNION OF AFSCME,

JOHN SEFERIAN, CHAIRPERSON OF
THE JUDICIAL PANEL,

RALPH MENDEZ, PRESIDENT OF LOCAL
121, AN AFFILIATE OF AFSCME,

RAYMOND WELBORNE, PRESIDENT OF
LOCAL 1227 AN AFFILIATE OF
AFSCME.

Defendants.

_____/

Hassan Aleem, In Pro Se
1699 Fullerton
Detroit, Michigan 48238
(313) 922-8222 or 224-3212

L. Rodger Webb (P33356)
Attorney for Defendants AFSCME

McEntee, Seferian and Mendez
3100 David Stott Building
Detroit, Michigan 48226
(313) 963-9830

Stuart M. Israel (P15359)
Attorney for Defendant
Welborne
17117 West Nine Mile Road
Southfield, MI 48075
(313) 559-2110

---/

MOTION TO ADJOURN PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

NOW COME defendants American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, McEntee, Seferian and Mendez, by and through their counsel, Webb, Hildebrandt & Paton, P.C., and in response to plaintiff's motion for summary judgment cross move to adjourn said motion pending resolution of plaintiff's internal union appeal. In support of their motion, defendants state as follows:

1. Defendants have meritorious defenses to plaintiff's action against them, including that most of the allegations in plaintiff's complaint are not cognizable under 29 USC 412, or otherwise, including alleged violations of the U.S.Constitution, fraud,

plaintiff's local union's alleged failure to take grievances to arbitration, violations of the Administrative Procedures Act and breach of the duty of fair representation. Plaintiff has no standing to assert certain of his allegations, among them the alleged wrongful processing of other unit members' grievances. Other of plaintiff's allegations simply do not appertain to the named defendants, as for example that relation to City of Detroit contract negotiations. Further, plaintiff's claim for injunctive relief is moot, and the named individual defendants are not proper defendants. The defendants have these defenses as issues of law.

Moreover, the International Union has a meritorious defense to any of plaintiff's allegations cognizable under 29 USC 412. Plaintiff's statutory rights have not been violated; the processing of the charges underlying plaintiff's complaint was strictly according to the Union Constitution, and the provisions of 411 simply have not been abridged, by either the processing of the charges or the result.

As this case is joined, AGSCME intends to file a motion to dismiss or for summary judgement

on these and other grounds, with appropriate affidavits and other evidentiary support.

In this regard, it may useful to depose plaintiff to constrain him to be specific about his cause of action and theories of recovery. These defendants have noticed plaintiff's deposition for April 23, 1993. A copy of said notice with request to produce is attached hereto.

2. At the moment, these defendants have pending a motion to dismiss for failure to exhaust administrative remedy. Their motion has been referred to a magistrate; a hearing has not as yet been scheduled. As presented to the Court, plaintiff has the right under the AFSCME Constitution to appeal the decision of the trial officer, issued January 7, 1993, the full Judicial Panel, within 30 days of receipt of the decision. Said exhaustion is obligatory under the AFSCME Constitution; the exhaustion provision is enforceable in the discretion of the Court.

Plaintiff has now exercised his right to appeal; a copy of his appeal, in which he makes substantially the same arguments he presents to the Court, is

attached hereto. Apparently plaintiff did not receive the initial mailing in early January, but did receive a subsequent mailing. His appeal appears to be timely. Pursuant to the AFSCME Constitution, the full Judicial Panel must hear his appeal not later than 120 days from the date of filing.

3. The issues raised both in plaintiff's complaint and his motion for summary judgment may be substantially or entirely resolved through plaintiff's appeal. The Judicial Panel considers the verbatim record made before the trial officer along with supplemental written submissions made by the parties, and is empowered to vacate or modify the trial officer's decision. The trial officer may not participate in the full Panel appeal.

In the circumstances, where defendants have not filed a responsive pleading, but have manifestly good faith defenses, and where the issues before the Court may be substantially altered or resolved altogether, AFSCME submits that the Court's discretion is intelligently and fairly exercised by deferring consideration of plaintiff's motion for summary judgment pending exhaustion of his

administrative remedy.

In the alternative, should the Court determine to decide the motion irrespective of the internal appeal, AFSCME requests a reasonable time to conduct discovery and file its answer and cross motion to dismiss or for summary judgment.

Respectfully submitted,

WEBB, HILDEBRANDT & PATON, P.C.

BY: /s/ L. Rodger Webb
L. Rodger Webb
(P33356)
Attorney for AFSCME, McEntee, Seferian and Mendez
3100 David Stott Building
Detroit, Michigan 48226
(313) 963-9830

Dated: March 25, 1993

EXHIBIT 5

IN THE THIRD DISTRICT COURT
FOR THE COUNTY OF WAYNE
STATE OF MICHIGAN

Thomas G. Monks,
Ricardo Gonzales,
Ricardo Reyes,

Petitioners,

VS Case No.92-212295

CITY OF DETROIT
Buildings & Safety Engineering
Department,

LOCAL 1227 and AFSCME Michigan
Council 25,

Respondent /

MOTION TO SHOW CAUSE

Upon the petition, the supporting affidavit of petitioners, and law in support of petition herewith, it is:

ORDER that respondent City of Detroit and Local 1227 and AFSCME show cause in room 1907 of the Third District court, City County Building, 2 Woodward Avenue, on the 24 day of July 1992, at 9 AM O'clock, to show why a Temporary Restraining Order should not be issued,

in accordance to M.C.R. 3.310 (B).

That the City violated the contract by keeping provisional hires, other limited term employees, plus those who have been promoted within six months from being demoted. The Local 1227 and AFSCME refused to represent and enforce the contract.

IT IS FURTHER ORDERED that effective immediately, and pending the hearing and determination of this Order to Show Cause, the respondents, City of Detroit, Building & Safety Engineering Department and Building Inspectors, AFSCME, Local 1227, and other persons acting in concert or participating are to restrain form any more illegal layoffs and reinstate petitioners and others who have bee laid-off.

IT IS FURTHER ORDERED that the Order to Show Cause and all other papers attached to this application be served on the fore-said respondents by 7-17-92.
date

/s/ Michael J. Talbot
THE THIRD DISTRICT COURT JUDGE

Date_____1992

EXHIBIT 6

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

THOMAS G. MONKS, RICARDO
GONZALEZ, RICARDO REYES,

Plaintiffs,

v. Case No.92-212-295-CL

Hon. Michael J. Talbot
CITY OF DETROIT, BUILDINGS
AND SAFETY ENGINEERING
DEPARTMENT, AFSCME and
LOCAL 1227,

Defendants.
_____/

Thomas G. Monks
Ricardo Gonzalez
Ricardo Reyes
Plaintiffs, In Pro Per
8891 Auburn Street
Detroit, MI 48226
(313) 837-3214

Jack Timmony (P34892)
Assistant Corporation Counsel
Attorney for Defendant City of
Detroit, Buildings and Safety
Engineering Department
1010 City-County Building
Detroit, MI 48226
(313) 224-4550

Stuart M. Israel (P15359)
Miller, Cohen, Martens, Ice
& Geary, P.C.
Attorney for Defendants
Michigan Council 25, AFSCME
and AFSCME Local 1227
1400 North Park Plaza
17117 West Nine Mile Road
Southfield, MI 48075
(313) 559-2110

NOTICE OF HEARING

UNIONS' MOTION TO DISSOLVE EX PARTE ORDER AND FOR ATTORNEY FEES AND COSTS

MEMORANDUM IN SUPPORT OF UNIONS' MOTION TO DISSOLVE EX PARTE ORDER AND FOR ATTORNEY FEES AND COSTS

NOTICE OF HEARING

TO: Thomas G. Monks
Ricardo Gonzalez
Ricardo Reyes
Plaintiffs, In Pro Per
8891 Auburn Street
Detroit, MI 48226

Jack Timmony (P34892)
Assistant Corporation
Counsel, Attorney for
City of Detroit,

Buildings and Safety
Engineering Department
1010 City-County Building
Detroit, MI

PLEASE TAKE NOTICE that Unions' Motion to Dissolve Ex Parte Order and for Attorney Fees and Costs will be brought on for hearing on Friday, July 24, 1992 at 9:00 A.M. before the Honorable Michael H. Talbot, 1907 City-County Building, Detroit, Michigan, or as soon thereafter as counsel may be heard.

MILLER, COHEN, MARTENS, ICE & GEARY, P.C.

/s/ Stuart M. Israel
Stuart M. Israel (P15359)
1400 North Park Plaza
17117 West Nine Mile Road
Southfield, MI 48075
(313) 559-2110

UNIONS' MOTION TO DISSOLVE EX PARTE ORDER AND FOR ATTORNEY FEES AND COSTS

Defendants Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and AFSCME Local 1227, pursuant to MCR 3.310 and 2.114, ask the Court to dissolve its ex parte order and to direct Plaintiffs to pay the Unions' attorney fees and costs incurred in defending this action.

In addition, pursuant to MCR 3.310(B)(5), the Unions ask that the Court hear their motion at July 24, 1992 show cause hearing already scheduled by this Court's ex parte order.

This motion is supported by the attached affidavit, exhibit and memorandum as well as by the Unions' Memorandum in Opposition to Plaintiffs' Request for Injunction, also filed with the Court today.

The Unions' counsel telephoned Plaintiffs' concurrence in the relief sought in this motion by letter to Plaintiffs accompanying service of the motion.

MILLER, COHEN, MARTENS, ICE & GEARY, P.C.

/s/ Stuart M. Israel
Stuart M. Israel (P15359)
1400 North Park Plaza
17117 West Nine Mile Road
Southfield, MI 48075
(313) 559-2110

Attorney for Defendants Michigan Council 25, AFSCME Local 1227

MEMORANDUM IN SUPPORT OF UNIONS' MOTION TO DISSOLVE EX PARTE ORDER AND FOR ATTORNEY FEES AND COSTS

In an ex parte order titled "Motion to Show Cause," prepared by Plaintiffs, the Court directed the Unions and the City of Detroit to "show why a Temporary Restraining Order should not be issued to M.C.R.3.310(B)." The ex parte order is attached as Exhibit A to the Richardson affidavit.1

The ex parte order incorporates Plaintiffs; charge that "Local 1227 and AFSCME refused torepresent (Plaintiffs) and enforce the contract." The ex parte order directs the Unions to "restrain from any more illegal layoffs and reinstate petitioners and others who have been laid-off."

The Unions ask that the Court immediately dissolve the ex parte order.

First, there is no basis in fact or law for Plaintiffs' claims against the Unions.

As demonstrated by the Unions' Memorandum in Opposition to Plaintiffs' Request for Injunction, incorporated by reference here, there is no truth to Plaintiffs' allegation that the Unions "refused" to represent Plaintiffs. To the contrary, as the Welborne affidavit specifies, Local 1227 filed a timely grievance on Plaintiffs' behalf last April

challenging the layoff notices and the layoffs. The grievance is currently pending at the fourth step of the contractual grievance procedure.

Moreover, also as demonstrated in the Unions' Memorandum in Opposition to Plaintiffs' injunction request; Plaintiffs have failed to state any legally cognizable claim against the Unions.

Second, to the extent the ex parte order is a temporary restraining order, it was issued in violation of MCR 3.310(B), (C), and (D)

.

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1 The Affidavit of Council 25 Legal Liaison Renita Richardson, attached as Exhibit 1, is cited as "Richardson Af., Par.___". It was issued without notice. (see Richardson Aff) without any specification by Plaintiffs of any unsuccessful efforts to give notice, and without any certification by Plaintiffs of reasons justifying issuance without notice, contrary to MCR 3.310(B)(1)(a)-(b) and (2)(b). The order does not state the time and date of its issuance, or describe the irreparable injury it seeks to prevent, or state why it was issued without notice, contrary to MCR 3.310(B)(2)(a)-(b). The order is insufficiently specific,

contrary to MCR 3.310(C)(1)-(3), and does not provide for security or state any justification for excusing Plaintiffs from providing security, contrary to MCR 3.310(D)(1)-(2)

In short, Plaintiffs misled the Court, factually and procedurally.

Plaintiffs' action has no basis in fact and is unwarranted legally, both in substance and procedure. Indeed, Plaintiffs failed to make even the most reasonable, minimal inquiry into the facts, which they could have doe easily by contacting Local 1227 or Council 25 or the City. Had they done so, they wold have learned that the grievance was timely filed, that it had been prosecuted by the Unions to the fourth step of the contractual grievance procedure, and that the grievance is currently pending. Plaintiffs would have determined that the Unions never "refused" action but, to the contrary, are timely and vigorously prosecuting the grievance in the proper forum.

For these reasons, the ex parte order should be dissolved immediately.

In addition, the Unions are entitled to sanctions pursuant to MCR 2.114(E), as Plaintiffs' action is without basis in fact and law, and Plaintiffs failed to make the most minimal inquiry into the facts.

The Union ask that the court direct Plaintiffs to pay the Union attorney fees and cost incurred defense of this action.

For these reasons, the Unions ask the Court to dissolve the ex parte order and to direct Plaintiffs to pay the Unions' attorney fees and costs incurred in the defense of this action.

MILLER, COHEN, MARTENS, ICE & GEARY, P.C.

/s/ Stuart M. Israel

Stuart M. Israel (P15359)
1400 North Park Plaza
17117 West Nine Mile Road
Southfield, MI 48075
(313) 559-2110

Attorney for Defendants Michigan Council 25,AFSCME and AFSCME Local 1227

Dated: July 21, 1992

EXHIBIT 7

AFFIDAVIT OF RENITA RICHARDSON

I am Legal Liaison for Michigan Council 25, American Federation of State, County and Municipal Employees, (AFSCME) AFL-CIO. I coordinate all litigation in which Council 25 is involved. All legal papers served on Council 25, and all inquiries about legal matters are referred to me.

Neither Thomas G. Monks nor Ricardo Gonzalez nor Ricardo Reyes nor any other person on behalf of any one of them notified Council 25 that they were going to contact the Wayne County Circuit Court or Judge Michael J. Talbot or any other Judge to request a temporary restraining order directed at Council 25 or any of its local affiliates. Council 25 had no notice of this litigation until it received the document titled "Motion to Show Cause", attached as Exhibit A, with Judge Talbot's stamp, setting a show cause hearing for July 24, 1992.

The subject matter of this lawsuit is the subject of a pending grievance filed by AFSCME Local 1227. Council 25

representative Annette Garrett and Local 1227 President Raymond Welborne met with City representatives in a foruth step meeting during June, 1992. The charges made by Monks, Gonzalez, and Reyes that Local 1227 or Council 25 has "refused" to represent them or to enforce the contract is untrue.

/s/ Renita Richardson
Renita L. Richardson

Sworn to before me this 20th day of July, 1992.
/s/ Ronda L. Scott Notary Public.
My Commission expires: 5-15-93

EXHIBIT 8
AFSCME

November 18, 1992

Hassan A. Aleem
1699 Fullerton
Detroit, MI 48238

Re: JUDICIAL PANEL CASE NO.92-95
Welborne v. Aleem

Dear Brother Aleem:

Your communication dated November 5, 1992 addressed to Judicial Panel Member Ralph Mendez has been referred to me for response. In that communication, you have attempted to file charges against all of the members of the Judicial Panel based upon your dissatisfaction with a decision by the undersigned that the Panel would assume original jurisdiction over the above-referenced case. If you are dissatisfied with that decision, your remedy is to file an appeal to the full Judicial Panel once a final decision has been issued in this case by Judicial Panel Member Mendez. Under the International Constitution, if you are dissatisfied with the decision of the full Judicial Panel, you may appeal it to next International Convention.

In Solidarity,

/s/ John Seferian
John Seferian
Judicial Panel Chairperson

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SIXTH DIVISION

HASSAN ALEEM,

Plaintiff

vs. Case No.93 CV 70076 DT
Hon.PATRICK J. DUGGAN

INTERNATIONAL UNION OF AFSCME,

GERALD W. McENTEE, PRESIDENT OF INTERNATIONAL UNION OF AFSCME,

JOHN SEFERIAN, CHAIRPERSON OF THE JUDICIAL PANEL,

RALPH MENDEZ, PRESIDENT OF LOCAL 121, AN AFFILIATE OF AFSCME,

RAYMOND WELBORNE, PRESIDENT OF LOCAL 1227, AN AFFILIATE OF AFSCME.

Defendants.

_____/

I HASSAN ALEEM, being duly sworn, say.

1. I am the plaintiff in the above-entitled action, and make this affidavit in support of plaintiff motion for Summary Judgment.

2. The following facts are relevant to the issues involved in the above-entitled action. That in January 1992, Plaintiff was appointed by Raymond Welborne, the President of Local 1227 with the consent and approval of the Executive Board, in accordance with the local by laws.

That in May 1992, Plaintiff publicly announced my candidacy to run for president of local 1227, against incumbent Raymond Welborne.

That on or about May 28, 1992, grievances were filed for Thomas G. Monks, Ricardo Gonzalez, and Ricardo Reyes, for illegal lay off.

That Welborne refused to give the grievants any assurance about taking their grievance to arbitration, plus the fact there not been filed for the Detroit local of council 25 for the past eight (8) year. Because of his abandonment and their past grievances and experience of his inadequate or lack of representation. The grievants filed a suit.

5.) That on July 24, 1992, Raymond Welborne order me not to talk to Monks, Gonzalez, and

Reyes and not to go to court to observe the court proceeding. That I would have to decide who side I was on because they filed a suit against the union. If I didn't I would be fired as chief steward. When he returned from court he told me I was fired. I told him to put it in writing. (See Exhibit A affidavit in support) This is a clear and direct violation of Freedom of Speech and Assembly of LMRDA 29 U.S.C. 411 (2),.

6.) On July 30, 1992, Raymond Welborne, the President of local 1227, filed charges dated July 27, 1992, and was heard before the Executive Board. (See Exhibit G in support) The arbitrary and opprobrium proceeding by Welborne and the Executive Board didn't give me a copy of the charge at this time neither was I present nor was I given a notice to appear. This is a clear violation of section 8 of the Bill of Right of union members of the International Constitution it states in part: "Accused members or officers shall have the right to fair trial with strict adherence to due process. The accused shall be considered innocent until proven guilty.

This is also a violation of LMRDA 29 U.S.C.411 Section 101 (5) (A), (B), (C) (b),

7,) On August 5, 1992, local 1227 rescinded the action of Welborne and the Executive Board and reinstated me as chief steward in accordance to the by laws of local 1227.

b.) I being at a disadvantage for not having a copy of the rules as required to present a effective appeal replied in response setforth as Exhibit G. I sent him a signed statement by the membership with thirteen (13) signature explaining what took place at August 5, 1992, membership meeting.

c.) Base on the fact the way the cahrges were illegally carry out Seferian violated his fiduciary duty in accordance to Article X Section 16 State: If the charges are not sustained and the trial body or the appellate body may impose such penalty on the charging party as in its judgment is deemed proper.

d.) Also Article X1 Section 11 of the Constitution states: In cases reaching appeal, the Panel member or members may in their discretion also consider any written record which has been made before any lower trial body. If in the opinion of such panel member or members, after reviewing the written record which was made before a lower trial body.

11.) I attempted to filed charges with the President of the International, Gerald W. Mc Entee

against Seferian, Ralph Mendez, and the whole Judicial Panel. The president received the charges, William Lucy the Secretary-Treasurer and Ralph Mendez received copies of the Charge and Brief and Defense prior to the hearing schedule for November 12, 1992.

a.) The President refused to carry out his fiduciary duty and obligation in good faith and invidiously denied me the right to file charges. He even gave John Seferian the accused the authority to deny me access to function pursuant to the International Constitution for the purpose of resolving internal union disputes stated in the Preamble of AFSCME judicial Panel Rules of Procedure.

and Welborne conspired to illegally interfering to eliminate local 1227 election all together through a fraudulent schene. I and other union members sent him a letter of protest and reject his illegal constitutional changes (See Exhibit N 2)

He alleged that they were vote on in 1987 but no one seen to know anything about this but him. First of all the local by laws and the International constitution states All other officer shall be elected for a

term of two years, in the even-numbered years. If the changes was made in 1987 how and when did it get to a odd year in 1987. When the Constitution only allow an even year election. The December 15, 1992, election was illegally canceled. We have yet to have an election despite the letters of protest. If what he said is true it was in violation of the laws and the International Constitution that govern it. This also a violation of LMRDA 29 U.S.C. Section 101(a)(1), 483 and 529, 452.137 (a) Section 404

Mendez conduct this illegal proceeding like an autocrat and denied me the right to defend myself. (a) The trial officer had a copy of my Charge and Brief in Defense and wouldn't allow it into the record, (b) He denied me and my witness Ray Anderson the right to submit signed statement from the membership regarding this matter on my behalf, (c) denied me the right to cross-examine the accuser, (d) The right to be tried within sixty days after having been personally served or sixth three (63) calendar days, (e) The right to have at least fifteen days advance notice of date, time, and place.

I was not afforded an fair and full hearing as provided by article X Section 10, and LMRDA 29 U.S.C. 411 Section 101 5 (B),(C),(B),

Mendez not only was trial officer but he also illegally render the decision in violation

of Article X Section 15 it states "A trial body may, if it finds the accused person guilty" This state trial body not trial officer.

13.) I initiated this civil suit and injunction to stop this illegal suspension, harassment and disciplinary action in the present and the future by the defendant and it's agent on January 8, 1993, I received the illegal suspension for two (2) years after the fact.

a.) The defendant final sent a decision 158 days later in violation of Article X Section 18 "All decision must be render within thirty (30) day following the completion of trial.

14.) The defendant internal remedies by denying me the right to file charges and delaying a decision where I could appeal.

a.) The defendant internal remedies does not provide for damages I am seeking so it to would make it futile, not to mention the multiple violations

3.) The foregoing facts are known by me to be true, of my own knowledge. I am competent to testify to such facts, and would so testify if I appeared in court as a witness at the trial of the matter.

Subscribed and sworn to before me on February 22 ,1993

/s/ Hassan Aleem

Hassan Aleem
1966 Fullerton
Detroit, Michigan
Phone: 923-8222 or 224-3212